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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FRANCIS, MARK P

ART UNIT PAPER NUMBER

2193

DATE MAILED: 12/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,330

Applicant(s)

GOURIOU ET AL.

Examiner

Mark P. Francis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10,11,13,29,30,32,35 and 37-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10,11,13,29,30,32,35 and 37-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the amendment filed September 14, 2006.
2. Claim 1-9 have been canceled and claims 37-39 have been newly introduced.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 35 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

With respect to claim 35,

This claim recites in the preamble "a computer readable memory that stores a system, the system comprising..." It is not clear how the computer readable memory which is software could store a System which is hardware inside its memory. Therefore, the claim as a whole comprises software means that do not require the use of hardware or a tangible medium as is rejected under 35 U.S.C. 101 as being Non-Statutory.

As a suggestion to the Applicant, he or she might consider stating, "A computer readable memory that stores computer program codes, wherein the computer program code comprises..." Therefore, the claim as a whole recite functional descriptive material without a computer or computer readable medium.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 10-11, 13,29-30,32, 35, and 37-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Bennett. (U.S. Pat 7,114,104)

Independent claims

With respect to claim 10, Bennett discloses a method for controlling the execution of a child process created from a parent process,(Col 6:30-50, "...or parent process...") the method comprising:

instrumenting a parent process; ,(Col 6:30-50, "...or parent process...")

Monitoring execution of the parent process with a process monitor to collect information as to run-time behavior of the parent process; (Col 10:25-50, "...monitor suspension control...")

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Before a vfork system call is executed, (Col 6:30-60, "...vfork system call...") receiving with the process monitor indicia from the parent process that a vfork system call will be executed by the parent process; (Col 6:30-60, "...with associated system calls...") Suspending execution of the parent process;(Col 10:24-50, "...monitor suspension control...")

Extracting with the process monitor a process identifier from the indicia, the process identifier identifying a child process to be generated by the parent process when the parent process executes the vfork system call;(Col 8:30-50, "...process lds...")

Setting with the process monitor a process monitor thread to observe trace events generated by the child process; (Col 9:40-65, "...exit tracing...")

Resuming execution of the parent process to enable the parent process to execute the vfork system call; (Col 6:30-60, "...vfork()...")

and again suspending execution of the parent process.(Col 9:43-60, "...monitor suspending...")

With respect to claim 35, Bennett discloses a computer readable memory that stores a system,(Col 3:30-40, "...at least a microprocessor, memory...") the system comprising: A parent process configured to, before a vfork call is executed by the parent process, (Col 6:30-55, "...the parent process...")generate a pre-fork event that contains a process identifier of a child process that will be spawned from the parent process when the vfork system call is executed by the parent process;(Col 6:30-55, "...its own process ID...") and

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a process monitor configured to receive the pre-fork event(Col 10:24-45, "...a monitor suspension control...") and process identifier before the vfork system call is executed by the parent process, suspend execution of the parent process(Col 10:24-50, "...suspends the monitoring thread..."), and generate a process monitor thread that enables observation of trace events generated by the child process.(Col 9:60-67, "...The exit tracing...")

Dependent claims

With respect to claim 11, the rejection of claims 10 is incorporated and further, Bennett discloses further comprising: waiting for indicia that the child process has invoked at least one of an exec system call(Col 9:10-30, "...issues a system call...") and an exit system call (Col 9:60-67, "...The exit tracing control message...") or has been terminated by an operating system; and setting a process monitor thread to observe trace events generated by the parent process. (Col 10:1-20, "...and the exit tracing control message...")

And resuming execution of the parent process. (Col 11:45-60, "...to continue processing...")

With respect to claim 13, the rejection of claim 10 is incorporated and further, Bennett discloses that receiving indicia comprises receiving a pre-fork event that includes a process identifier that identifies the child process. (Col 6:20-50, "...or child process, is an exact copy of the calling process...")

With respect to claim 30, the rejection of claim 29 is incorporated and further, Bennett discloses that the step of checking whether the successful initiation of the child process can be asserted comprises verifying the success of a trace event by using the process identifier of the child process. (Col 6:30-60, "...returns the process ID of the child process...")

With respect to claim 32, the rejection of claim 29 is incorporated and further, Bennett discloses further comprising: aborting child process monitoring when the initiation of the child process is unsuccessful. (Col 8:20-50, "...effectively suspends the monitoring thread...")

With respect to claim 37, the rejection of claim 1 is incorporated and further, Bennett discloses further comprising analyzing run-time data observed during execution of the parent process once it is determined that the parent process has generated at least one of an exec system call (Col 9:10-25, "...issues a system call...") and an_exit system call or has been terminated by an operating system. (Col 6:60-67, "...an exit tracing control message...")

With respect to claim 38, the rejection of claim 35 is incorporated and further, Bennett discloses that the process monitor is further configured to generate a process monitor that enables observation of the parent process upon resumption of execution of the

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parent process after receipt of indicia that the child process has invoked at least one of an exec system call and an_exit system call or has been terminated by an operating system. (Col 10:1-30, "...the exit tracing control message identifies calls to sysexit()...")

With respect to claim 39, the rejection of claim 38 is incorporated and further, Bennett discloses that the process monitor is further configured to resume execution of the parent process.(Col 11:45-55, "...to continue processing,...")

Allowable Subject Matter

6. Claim 29 is allowed.

Response to Arguments

7. Applicant's arguments filed on September 14, 2006 have been fully considered with respect to claims 10-11, 13,29-30,32, 35, and 37-39 but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark P. Francis whose telephone number is (571)272-7956. The examiner can normally be reached on Mon-Fri 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai T.An can be reached on (571)272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


MENG-AC. AN
SUPERVISORY PATENT EXAMINER
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